

Appl. No. 10/764,215
Docket No. P-142M
Amdt. Dated July 6, 2010
Reply to Office Action mailed on March 3, 2010
Customer No. 27752

REMARKS

Claim Status

Claims 1-4 and 6-17 are pending in the present application. Claims 10-17 were previously withdrawn as a result of an earlier restriction requirement.

With this Response, claim 3 has been cancelled without prejudice. Consequently, claims 1-2, 4, and 6-9 are pending and under consideration.

With this Response, independent claim 1 has been amended. Support for this amendment can be found on page 7, line 25 of the specification as filed. Entry of this amendment is respectfully requested as no new matter has been added.

Interview

An interview was held on June 22, 2010, between the Applicants' undersigned representative and Examiners Vaikili and Marschel. During the interview, the substance of the Oliveira et al. (US Publication No. 2003/0157239) reference was discussed. Applicants note that as of the filing of the present Response, Applicants have been unable to find on PAIR the examiner's summary of that interview.

Rejection Under 35 U.S.C. § 102 Over Oliveira

Claims 1-4 and 6-9 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Oliveira et al. (US Publication No. 2003/0157239). Applicants respectfully traverse this rejection. The controlling law in this matter is not repeated herein for the sake of brevity but is incorporated by reference from the prior Responses, particularly with respect to anticipatory rejections.

The Office Action states that Oliveira anticipates the present claims since Oliveira teaches that the soybean meal can be used for cats and dogs and because it teaches using astaxanthin. For the following reasons, Applicants respectfully disagree.

However, in the interest of advancing prosecution, Applicants have amended independent claim 1 to even more fully distinguish it from Oliveira. As now amended, independent claim 1 recites, inter alia, a composition comprising astaxanthin, wherein said composition is selected from the group consisting of dog food compositions, cat food

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compositions and combinations thereof and wherein said companion animal is selected from the group consisting of dogs and cats; wherein said composition is nutritionally balanced dog composition or cat composition. Applicants submit that Oliveira cannot support a proper rejection under 35 U.S.C. § 102(b) because Oliveira does not disclose each and every element of the presently pending claims.

As amended, independent claim 1 now recites a nutritionally balanced dog composition or cat composition. As described on page 7 of the specification as filed, one embodiment of the present invention can be a composition that is nutritionally balanced. The term “nutritionally balanced” means that the composition has known required nutrients to sustain life in proper amounts and proportion based on recommendations of recognized authorities in the field of companion animal nutrition.

As best understood by Applicants, Oliveira makes no reference therein to astaxanthin as being included in soybean meal for cats and dogs. Additionally, Oliveira makes no reference to a nutritionally balanced composition for cats and dogs that includes astaxanthin. At best, as best understood by Applicants, Oliveira discloses extruded diets that can be used for salmon, wherein such diets can include astaxanthin for color and can include soybean meal (which itself does not contain astaxanthin). See Example 2. Therefore, Applicants submit that Oliveira makes no reference to a nutritionally balanced composition for cats and dogs that includes astaxanthin. Applicants submit that is because none of the compositions as disclosed in Oliveira are compositions that are intended to be used as nutritionally balanced compositions for cats and dogs, and indeed are compositions that cannot be used as nutritionally balanced compositions for cats and dogs as defined in the present application. Specifically, Applicants submit that the compositions as disclosed in Oliveira, the compositions in Example 2, are not nutritionally balanced compositions for cats and dogs such that the composition has known required nutrients to sustain life in proper amounts and proportion based on recommendations of recognized authorities in the field of companion animal nutrition. Accordingly, Applicants submit that rejection under 35 U.S.C. § 102(b) is improper because Oliveira does not disclose each and every element of the presently pending claims. Applicants respectfully request reconsideration.

Appl. No. 10/764,215
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Additionally, Applicants reiterate their previous position of the prior Response. That is, In paragraph 40 of Oliveira, it discloses that the soybean meal of its disclosure can be used as a protein and energy source in other manufactured feeds, other than fish, that include dogs and cats. As best understood by Applicants, Oliveira makes no reference therein to astaxanthin as being included in soybean meal for cats and dogs. Oliveira, on page 5, discloses typical characteristics of soybean meal. Oliveira does not disclose astaxanthin as a component of soybean meal on page 5. In Tables 1 and 2 of Oliveira, it discloses nine diet formulations of diets for fish feed and corresponding proximate compositions of the nine diets. As shown in Table 1, diets 1, 2, 3, and 4 include Denofa soybean meal while diets 5, 6, 7, and 8 contain AkvaSoy soybean meal, which is the soybean meal made by the disclosure of Oliveira. Importantly, diet 0 does not contain either of the soybean meals used in diets 1-8. As shown in Tables 1 and 2, each and every diet (0 through 8) contain astaxanthin, and Table 1 lists it as a "Constant ingredient". Thus, as best understood by Applicants, even diet 0, which has zero soybean meal shown in Table 1, contains astaxanthin. The logical conclusion to be made is that the astaxanthin is not coming from the two soybean meals but is present in some other ingredient or is being added on its own to the diets. Therefore, as best understood by Applicants and as disclosed by Oliveira, the soybean meal of Oliveira does not contain astaxanthin. Consequently, as best understood by Applicants, the soybean meal of Oliveira, even if used for dogs and cats, does not contribute astaxanthin to dogs and cats since it does not comprise astaxanthin, according to a fair reading of the tables and disclosure of Oliveira. Thus, even though Oliveria discloses that its soybean meal can be used for dogs and cats, no astaxanthin is part of the soybean meal, and thus Oliveira does not teach, disclose, or suggest using astaxanthin for dogs and cats through its soybean meal. Therefore, since claim 1 of the present application is directed to, inter alia, a composition comprising astaxanthin wherein the composition is adapted for use by a companion animal and wherein the composition is selected from the group consisting of dog food compositions, cat food compositions and combinations thereof and wherein the companion animal is selected from the group consisting of dogs and cats, Oliveira fails to disclose each and every element of claim 1. As a result, Oliveira fails to anticipate the

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claims. Applicants respectfully request reconsideration and withdrawal of the rejection. Since each and every claim depends either directly or indirectly from claim 1, the rejection of those claims should be withdrawn for the same reasons.

CONCLUSION

This Response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied reference. In view of the foregoing, reconsideration of this application and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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